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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII and Parts 720, 722, 735, 750, 790, 791, 792, and 793

Redesignation of CFR Chapters Assigned to National Credit Union Administration

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; redesignation of sections.

SUMMARY: The NCUA Board has voted to redesignate some of the parts in Title 12 of CFR that are reserved to it. The basic breakdown will be into those regulations affecting credit unions and those that effect NCUA only. This is being done to simplify the ability of credit unions to locate those parts of the regulations that affect only them.

EFFECTIVE DATE: January 5, 1984.

ADDRESS: National Credit Union Administration 1776 G Street, N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Todd Okun, Assistant General Counsel, at the above address or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: The NCUA Board, in order to simplify for credit unions the locating of relevant rules and regulations, has voted to redesignate 12 CFR 700, *et seq.* into two divisions: Parts 700-789 are to be parts affecting only credit unions and Parts 790-799 are to be parts affecting only the internal operations of NCUA.

Regulatory Procedures

The NCUA Board has determined that because this action is non-substantive in nature, consideration of the Financial Regulatory Simplification Act, the Regulatory Flexibility Act and the

Paperwork Reduction Act are unnecessary.

Authority: 12 U.S.C. 1766(a) and 1789(a)(11).

Accordingly, 12 CFR Parts 700, *et seq.* is amended as follows:

1. Parts 700 through 789 are designated "Subchapter A: Regulations Affecting Credit Unions."

2. Parts 790 through 799 are designated "Subchapter B: Regulations Affecting the Operations of the National Credit Union Administration."

3. Part 720, "Description of Offices, Disclosure of Official Records, Availability of Information," is redesignated as Part 790.

4. Part 722, "Rules of Board Procedure," is redesignated as Part 791.

5. Part 735, "Employee Responsibility and Conduct," is redesignated as Part 792.

6. Part 750, "Tort Claims Against the Government," is redesignated as Part 793.

By the National Credit Union Administration Board.

Rosemary Brady,

Secretary NCUA Board.

[FR Doc. 84-31 Filed 1-4-84; 6:45 am]

BILLING CODE 7535-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Staff Compliance Guidelines.

SUMMARY: The staff of the Federal Trade Commission publishes the first stage of its staff compliance guidelines for the Funeral Rule. The staff is publishing these guidelines to provide assistance to industry members regarding areas in which the staff believes that guidance should prove most helpful to industry members. The views expressed in the guidelines are those of the staff only. They have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the trade regulation rule.

DATE: Effective January 1, 1984.

FOR FURTHER INFORMATION CONTACT: Lewis Rose, 202-376-3478, or Raouf M.

Abdullah, 202-376-2820, Attorneys, Federal Trade Commission, Division of Enforcement, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Compliance Guides

I. Introduction

These interpretive guidelines describe certain provisions of the Federal Trade Commission's trade regulation rule on funeral industry practices,¹ which was promulgated on September 24, 1982.² The Funeral Rule is scheduled to become effective on two different dates. Those portions of the Funeral Rule which prohibit certain oral or written misrepresentations will become effective on January 1, 1984.³ Those portions of the Funeral Rule which impose an affirmative obligation upon funeral providers (i.e., price lists, itemization, telephone disclosures, written disclosures) will take effect on April 30, 1984.⁴

These compliance guidelines cover only those Rule provisions which become effective on January 1, 1984. A second set of compliance guidelines, covering those provisions of the Rule which become effective on April 30, 1984, will be issued at a later date. These guidelines neither amend nor modify the Funeral Rule. The staff is publishing these guidelines to provide assistance to industry members in understanding the Commission's Rule and complying with its obligations.

The views expressed in the guidelines are those of the staff only; they have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for staff in assessing compliance with the Commission's Funeral Rule.

These guidelines explain, section by section, the provisions of the Rule which become effective on January 1, 1984.

¹ 16 CFR Part 453.

² 47 FR 42200.

³ The Rule provisions which are scheduled to become effective on January 1, 1984 are appended as Attachment A to these guidelines. The applicable sections are: 453.1, 453.3(a)(1)(i), 453.3(a)(2)(i), 453.3(b)(1)(i), 453.3(c)(1)(i), 453.3(d)(1), 453.3(e), 453.3(f)(1)(i), 453.8, and 453.9. 48 FR 45537 (October 6, 1983).

⁴ The Rule provisions which are subject to the extension of the effective date are: 453.2, 453.3(a)(1)(ii), 453.3(a)(2)(ii), 453.3(b)(1)(ii), 453.3(b)(2), 453.3(c)(1)(ii), 453.3(c)(2), 453.3(d)(2), 453.3(f)(1)(ii), 453.3(f)(2), 453.4, 453.5, 453.6, 453.7, and 453.10.

Included in the discussion of each Rule provision are illustrations of how the Rule will operate in specific fact situations which may arise in the ordinary course of business for many funeral providers. The guidelines cover those areas in which guidance should prove most helpful to industry members. If you have further questions regarding the Rule, they will be handled informally by the staff, or if appropriate by the Commission, as provided for in Sections 1.1 through 1.4 of the Commission's Rules of Practice.

II. Who must comply with the Rule?

A. Generally. Anyone who is a "funeral provider" is covered by the Funeral Rule and must comply with all of its requirements. The Rule defines a "funeral provider" as "any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public." Only those who sell or offer to sell *both* funeral goods and funeral services are covered.

Funeral goods and funeral services are separately defined by the Rule. Funeral goods consist of all products sold to the public for use in connection with funeral services. Funeral services consist of two types of functions:

1. Those services used to care for and prepare human bodies for burial or other disposition; and
2. Those services used to arrange, supervise or conduct the funeral or disposition.

Both types of services must be performed in order to come within the definition of "funeral services."

Thus, in order to be classified as a funeral provider and therefore be covered by the Rule, you must sell funeral goods *and* provide services to care and prepare remains for disposition and provide services to arrange, supervise or conduct the final disposition.

Illustration #1: You operate a traditional funeral home selling various caskets, burial clothes and/or alternative containers. In addition, you consult with the family and clergy, arrange and direct the ceremony, prepare and file required notices, and/or coordinate with the cemetery or crematory. Other services you provide include embalming, facilities for viewing, and/or preparation of the body for disposition. Are you covered by the Rule?

Yes. You are a funeral provider as defined by the Rule. The sale or offering for sale of caskets, burial clothes and/or alternative containers meets the definition of funeral goods. In addition, the professional services you offer

include both care for and preparation of human bodies for burial or other disposition, and also arrangement, supervision or conducting of the funeral and/or disposition.

Illustration #2: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. However, you have separately incorporated the sale of funeral goods from the provision of funeral services. Are you covered by the Rule?

Yes. Under these circumstances, you must comply with the Rule because as a person who sells funeral goods and funeral services you meet the definition of a funeral provider.

Illustration #3: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. A consumer wants you to arrange a funeral but is providing his own casket and does not want to purchase any other funeral goods from you. Is this transaction covered by the Rule even though you are not selling funeral goods to this particular consumer?

Yes. If you sell or offer to sell funeral goods and funeral services you must comply with the Rule's provisions for every consumer, even for those consumers who wish to purchase only goods or only services.

Illustration #4: You have a traditional funeral practice in that you sell various funeral goods, prepare remains and arrange for final dispositions. Rather than maintaining your own casket selection room, you use a manufacturer's showroom to sell caskets. Are you covered by the Rule?

Yes. You are selling or offering to sell funeral goods and funeral services and therefore must comply with the Rule's provisions. This is true even though you are utilizing a manufacturer's showroom to sell caskets. Although the casket manufacturer is not covered by the Rule, as discussed in Illustration No. 5 below, you still meet the definition of a funeral provider and must comply with the Rule.

Illustration #5: You are a casket salesman or a person selling caskets or coffins or kits to make caskets. Are you covered by the Rule?

No. Casket salesmen and others, if they only sell caskets, coffins or casket kits and provide no services relating to disposition, are not covered under the Rule. They are only providing funeral goods. They must also provide funeral services in order to be covered.

Illustration #6: You operate a cemetery and want to know if you must comply with the Rule. Your cemetery sells outer burial containers and grave liners. Are you covered by the Rule?

No. Under the Rule's definitions, although you sell funeral goods, you would *not* be considered a funeral provider since you only arrange or conduct final dispositions and do not prepare remains for final dispositions. Thus, a cemetery generally only performs one of the functions included in "funeral services." It would have to provide *both* in order to be covered under the Rule.

Illustration #7: Is a cemetery which also operates a funeral home covered under the Rule?

Yes. All funeral providers are covered by the Rule even those which are operated by a cemetery. As long as you provide funeral goods and services, you must comply with the Rule's requirements.

Illustration #8: You operate a direct disposition company which arranges for direct cremations and sells urns for cremated remains. Are you covered by the Rule?

Yes. In this situation, the Rule would cover the direct disposition company. The company is selling funeral goods (i.e., urns) and provides funeral services in that it cares for and prepares the bodies for the direct cremation and arranges the final disposition.

Illustration #9: Same situation as above except that your direct disposition company does not sell urns or any other funeral goods. Are you still covered?

No. In this situation, the direct disposition company would not be covered since it provides *only* mortuary and disposition services. To be covered by the Rule, you must provide both funeral goods and funeral services.

Illustration #10: Are crematories which sell urns and provide services to care for and prepare human bodies for final disposition covered by the Rule?

Yes. In this situation, the crematory meets the definition of a funeral provider. It sells funeral goods and conducts the disposition, thereby satisfying the supervisory prong of the definition of a funeral provider. In addition, the crematory in this illustration provides those services used to care for and prepare human bodies for final disposition. However, if the crematory did not provide services to care for and prepare human bodies for final disposition, it would not be covered by the Rule. In the case of a crematory, final disposition would be the cremation.

B. Pre-Need Contracts Negotiated After Effective Date of Rule. The Rule's coverage does extend to funeral providers who sell pre-need contracts after the effective date of the Rule. That

means that you must comply with all the relevant portions of the Rule when you discuss pre-need arrangements with consumers.

Illustration #1: You operate a traditional funeral home. After the Rule becomes effective, a family enters your establishment to pre-plan their funeral arrangements. Does the Rule apply?

Yes. The Rule applies in both pre-need and at-need circumstances. Therefore, you must comply with all of the relevant portions of the Rule when you discuss funeral arrangements.

Illustration #2: Same circumstances as above, but you sell pre-need contracts door to door, rather than solely in your establishment. Does the Rule apply?

Yes. The Rule requires funeral providers to comply whenever consumers inquire about funeral goods and services. Thus, the obligation of a funeral provider to comply with the Rule is not limited to discussions within the funeral home. If you visit a consumer, knowing that you are going to discuss pre-need arrangements, you should be prepared to comply with the Rule.

Illustration #3: You sell pre-need contracts to consumers at their residences on behalf of several funeral homes. You do not yourself, however, operate an establishment that provides funeral goods and services. Does the Rule apply?

Yes. In such a situation, you are an agent of a funeral provider. Therefore, you should be prepared to comply with the Rule.

C. Pre-Need Contracts Negotiated Prior to Effective Date of Rule. The Funeral Rule's coverage does not extend to pre-existing contracts such as pre-need arrangements or burial insurance policies payable in funeral goods and services.

Illustration #1: Before the Rule becomes effective, a consumer makes a pre-need arrangement with your funeral home for specific funeral goods and services. The consumer dies after the Rule goes into effect and the consumer's spouse comes to you to have you provide exactly those goods and services specified in the pre-need contract. Under these circumstances, is the transaction covered by the Rule?

No. In this situation, if you are fulfilling the obligations under a pre-existing contract, the provisions of the Rule would not apply.

Illustration #2: Same situation as Illustration #1 except that the spouse wants to upgrade the funeral arrangements specified in the pre-need contract. Does the Rule apply?

Yes. In this situation the spouse presumably intends to spend additional

money for the additional funeral arrangements and has asked about funeral arrangements. Therefore, the provisions of the Rule would apply because the funeral provider is offering additional funeral goods and services.

III. What Representations are Prohibited? Section 453.3

The requirements of this section state that you can not make any misrepresentations when you sell or offer to sell funeral goods or services to consumers in six specific areas which are described below.

A. Representations Concerning Embalming: Section 453.3(a). This provision prohibits you from telling consumers that state or local law requires you to embalm the remains whenever that is not true. Consequently, you may not tell a consumer that you are required to embalm under any of the following circumstances, *unless state or local law requires it:*

- (1) When the consumer wishes to have a *direct cremation*;
- (2) When the consumer wishes to have an *immediate burial*;
- (3) When the remains are placed in a sealed casket;
- (4) If refrigeration is available *and* there is to be a funeral with no viewing or visitation *and* there is to be a closed casket.

Illustration #1: A family wants you to arrange for a funeral involving an immediate burial with no viewing. Can you tell the family that embalming is required?

No. Unless there is some state or local law that requires it, you may not make any representation to this family that embalming is required.

Illustration #2: Your establishment has refrigeration facilities available. The law in your jurisdiction states that if there is no burial or cremation within two days of the date of death, the remains must be either embalmed or refrigerated. A family comes to your funeral home and wants you to plan a funeral for them. There is to be no viewing, but the burial will not take place until three days after the person died. Can you tell the family that embalming is required?

Yes, but only if you told them that refrigeration is an option. However, if the state law referred to embalming only, and did not list refrigeration as an option, the Rule would not be violated if you told the family that embalming was required by law.

Illustration #3: A family comes to your funeral home and wants you to plan a funeral for them. Under the particular circumstances, the law does not require that the body be embalmed.

The family requests that there be no viewing, that the remains be placed in a sealed casket, and requests two days of visitation. Can you represent to the family that embalming is required?

No. Under these circumstances you may not represent to the family that embalming is required because the remains have been placed in a sealed casket.

Illustration #4: Your state law provides that whenever a person has died of certain highly contagious diseases, such as diphtheria, smallpox or malaria, the remains must be embalmed. A family comes to your establishment to arrange a funeral service for someone who died of smallpox. Can you represent to the family that embalming is required?

Yes. In this situation, you may inform the family that because of the precise circumstances, embalming is required by law.

Illustration #5: A family enters your establishment and wants to arrange for a funeral with a formal viewing. The funeral is to occur two days after the death has occurred. In your jurisdiction, there is no law or regulation that requires embalming. Can you tell the family that embalming is required?

Yes. You may *not* tell the family that the law requires embalming since that is not the case. However, in this situation, even though there is no *legal* requirement that the body be embalmed, the Rule allows you to tell the family that embalming is a *practical necessity* to delay decomposition of the remains and to preserve them for viewing.

Illustration #6: A family enters your establishment and wants to arrange an immediate burial with no formal viewings. However, before burial, a family member wants to look at the body by lifting the lid of the unsealed casket. In your jurisdiction, there is no law or regulation that requires embalming. Can you tell the family that embalming is required?

No. You may not tell the family that the law requires embalming since that is not true. The fact that a family member wants to look at the remains does not constitute a formal viewing which would enable you to tell the family that embalming is required.

B. Representations Concerning Caskets for Cremations: Section 453.3(b). This provision prohibits you from telling consumers that state or local law requires them to purchase a casket when they wish to arrange for a direct cremation. The Rule defines a "direct cremation" as one that occurs without any formal viewing of the

remains or any visitation or ceremony with the body present.

Illustration #1: A family enters your establishment and wants to arrange for a funeral involving a direct cremation. This is one of the services that your establishment provides. Can you represent that a casket is required by law?

No. You may not make any representation to the family that either state or local law requires them to purchase a casket.

Illustration #2: A family wants to arrange for a funeral involving a direct cremation. This is not a service that your establishment provides. Can you tell them that the law requires them to buy a casket in such circumstance?

No. You may not make any statement that caskets are required by law for direct cremations.

C. *Representations Concerning Outer Burial Containers: Section 453.3(c).* This provision states that you may not tell consumers that state or local laws or regulations require the purchase of an outer burial container if that is not true; or that a particular cemetery requires an outer burial container, if that is not true. However, if the cemetery imposes such a requirement, you may explain this fact to the family.

Illustration #1: A family wants you to arrange a funeral involving a ground burial. No state or local laws or regulations require the purchase of an outer burial container. Moreover, there is no requirement in the cemetery that the family has chosen that an outer burial container be used. Can you represent that an outer burial container is required?

No. In this instance, you may not tell the family that an outer burial container is required by any state or local law or regulation, or by the cemetery in question.

Illustration #2: A family wishes to arrange a funeral with a ground burial. No state or local law or regulation requires outer burial containers. However, the cemetery that the family has chosen requires that the casket be placed in a rigid outer container. Can you represent that an outer burial container is required?

Yes. In this instance, you may tell the family that the cemetery requires the outer burial container.

D. *Representations Concerning Legal and Cemetery Requirements: Section 453.3(d).* This provision states that you may not tell consumers that federal, state or local law requires them to buy a particular funeral good or funeral service if that is not true. You also may

not tell consumers that a particular crematory or cemetery requires them to buy a particular good or service if in fact there are no such requirements.

Illustration #1: The law in your state requires that if you are going to ship the remains into another state, you must place those remains in a sealed casket. A family asks you to arrange a funeral and requests that you ship the remains to another state for burial. Can you inform them that they must buy a sealed casket under these circumstances?

Yes. In this instance, the law requires you to use a sealed casket. Because of these legal requirements, you may inform the family that there are certain purchases that they must make.

Illustration #2: A family enters your establishment and asks you to arrange a funeral with burial in a local cemetery. The cemetery does not require any particular funeral goods for burial. Can you inform the family that the cemetery requires them to buy a specific type of sealed casket under these circumstances?

No. You may not tell consumers that a particular cemetery requires them to buy a particular good or service if in fact there are no such requirements.

E. *Representations Concerning Preservative and Protective Value Claims: Section 453.3(e).* This provision states that you may not tell consumers that any funeral goods or funeral services will delay the natural decomposition of the deceased for a long-term or indefinite time. You also may not state that funeral goods will protect the deceased from gravesite substances when that is not the case.

While the Rule flatly prohibits representations that any funeral goods or services will delay the decomposition of the deceased for a long-term or indefinite time, the Commission recognizes that it is possible that some funeral goods or services may delay decomposition for a short period of time. However, a funeral provider can not say that any goods or services will delay natural decomposition after burial when such is not the case.

Illustration #1: A family asks you to arrange a funeral with a full service and a viewing of the remains. After the service, there is to be a ground burial. Can you tell the family that embalming will temporarily preserve the body to make it suitable for viewing?

Yes. In this situation, you may, if you want, explain to the family that embalming will temporarily preserve the body to make it suitable for viewing. However, you may not make any statement to them that embalming has

any preservative effect other than a temporary one.

Illustration #2: Same situation as above, except that the family now wants to discuss the purchase of a casket or outer burial container. Can you tell the family that these goods will delay the natural decomposition of the deceased for a long-term or indefinite time?

No. In explaining the properties of either of these items you may not tell the family that they can delay the natural decomposition of the remains for a long-term or indefinite period of time. You also may not state that either the casket or the vault will protect the body from air, dirt, water or other gravesite substances when such is not the case.

Illustration #3: Same situation as above. The manufacturer of the casket or burial vault states in the warranty that it will preserve the body for a period longer than five years. Must you make the warranty available to the family?

Yes. Existing federal law requires you to make all warranty information available to the consumer. This means that you must allow the family to read any of the manufacturer's warranties. However, you must disclose the warranty information without adopting as your own, any statement that you know to be a violation of the Rule. You may, if you wish, inform the family that while the manufacturer has made certain statements about the product that you are required to disclose, you do not have personal knowledge of the preservative value of the merchandise that enables you to state that it has a preservative value after burial.

F. *Representations Concerning Cash Advances: Section 453.3(f).* This provision states that you may not tell consumers that the price that you charge them for a cash advance item is the same price that you paid for it, when such is not the case. A cash advance item is any item which you describe to purchasers as a cash advance, accommodation, cash disbursement, or any similar terms.

The Rule does not prevent you from adding a service charge nor does it require you to disclose the amount of that charge. Moreover, there is no restriction on how much you may charge.

Illustration #1: A family asks you to arrange a funeral and asks for flowers as part of the service. You obtain the flowers from the florist and pay \$50.00 for them and charge the family \$75.00. Can you tell the family that the amount you are charging them is the same

amount that you paid for the flowers?

No. You may not represent to the family in any way that the cost to you for obtaining the flowers is the same as the amount that you are charging them.

Illustration #2: Same situation as above except that, instead of adding a service charge to the cost of the flowers, you charge the same amount that you paid for them but receive a trade or volume discount at the end of the year. Can you tell the family that the amount you are charging them for the flowers is the same amount that you paid?

No. You may not represent to the family in any way that the cost to you for obtaining the flowers is the same as the amount that you are charging them. As before, there is no requirement that you disclose the amount of that discount or rebate to the consumer.

IV. What Are the State Exemption Provisions of the Rule? Section 453.9

The Rule provides that it will not be in effect in a state to the extent specified by the Commission where:

(1) Application for an exemption is made by a state;

(2) There is a state requirement in effect which applies to any transaction to which the Rule applies; and

(3) The state requirement provides an overall level of protection which is as great as, or greater than, the protection afforded by the Rule.

If an exemption is granted, it shall be in effect only for so long as the state administers and enforces effectively the state requirement. During the exemption proceeding, the FTC Rule will remain in effect.

The Commission will issue guidelines regarding procedures for exemption proceedings at a later date. However, in the interim, the Commission will accept petitions from those states wishing to apply for an exemption.

Illustration #1: You are a funeral provider in a state which has a state requirement in effect which applies to the same transactions to which the Rule applies. The state requirement provides an overall level of protection which is as great as, or greater than, the protection afforded by the Rule. Can you file a state exemption petition?

No. The Rule provides that applications for exemption be made by state governmental agencies. Therefore, funeral providers or trade associations may not file for statewide exemption.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

Funeral Rule Provisions Which Become Effective on January 1, 1984

The following rules were originally published at 47 FR 42299, September 24, 1982. They are being republished without change for the convenience of the user.

§ 453.1 Definitions.

(a) *Accounting year.* "Accounting year" refers to the particular calendar year or other one year period used by a funeral provider in keeping financial records for tax or accounting purposes.

(b) *Alternative container.* An "alternative container" is a non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of cardboard, pressed-wood, composition materials (with or without an outside covering) or pouches of canvas or other materials.

(c) *Cash advance item.* A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to, the following items: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(d) *Casket.* A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, or like material, and ornamented and lined with fabric.

(e) *Commission.* "Commission" refers to the Federal Trade Commission.

(f) *Cremation.* "Cremation" is a heating process which incinerates human remains.

(g) *Crematory.* A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(h) *Direct cremation.* A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(i) *Funeral goods.* "Funeral goods" are the goods which are sold or offered for

sale directly to the public for use in connection with funeral services.

(j) *Funeral provider.* A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(k) *Funeral services.* "Funeral services" are any services which may be used to care for and prepare deceased human bodies for burial, cremation or other final disposition; and arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(l) *Immediate burial.* An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(m) *Outer burial container.* An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(n) *Person.* A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(o) *Services of funeral director and staff.* The "services of funeral director and staff" are the services, not included in prices of other categories in Section 453.2 (b)(4) which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices.

(p) *Unfinished wood box.* An "unfinished wood box" is an unornamented casket made of wood which does not have a fixed interior lining.

§ 453.3 Misrepresentations.

(a) *Embalming provisions.*

(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in Sections 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for

direct cremation, immediate burial, a funeral using a sealed casket, or if refrigeration is available and the funeral is without viewing or visitation and with a closed casket when state or local law does not require embalming.

(b) *Casket for cremation provisions.* (1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations.

(c) *Outer burial container provisions.*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case.

(d) *General provisions on legal and cemetery requirements.* (1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that Federal, State, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(e) *Provisions on preservative and protective value claims.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances when such is not the case.

(f) *Cash advance provisions.*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case.

§ 453.8 Declaration of intent.

(a) Except as otherwise provided in Section 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the

preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State exemptions.

If, upon application to the Commission by an appropriate State agency, the Commission determines that:

(a) There is a State requirement in effect which applies to any transaction to which this rule applies; and

(b) That State requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that State to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the State requirement.

[FR Doc. 84-162 Filed 1-4-84; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 453

Trade Regulation Rule Concerning Funeral Industry Practices; Change in Effective Date

AGENCY: Federal Trade Commission.

ACTION: Change in effective date.

SUMMARY: The effective date for § 453.3(b)(1)(ii) of the Federal Trade Commission's Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453, is postponed from January 1, 1984 until April 30, 1984. This section of the Rule prohibits funeral providers from representing that a casket (other than an unfinished wood box) is required for direct cremations. It is intended to operate in conjunction with § 453.4(a) of the Rule which prohibits funeral providers from requiring consumers to purchase a casket, other than an unfinished wood box, for direct cremations, if they arrange direct cremations. Because § 453.4(a) of the Rule has been stayed until April 30, 1984, the Commission has determined that a prohibition on statements by funeral providers that a casket is required for direct cremations would be inequitable.

FOR FURTHER INFORMATION CONTACT: Lewis Rose, 202-376-3478, or Raouf M. Abdullah, 202-376-2820, Attorneys, Federal Trade Commission, Division of Enforcement, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On September 24, 1982, the Commission published in the Federal Register a final Trade Regulation Rule for Funeral Industry Practices, 16 CFR Part 453.¹ Thereafter, the Rule was subject to Congressional review, which terminated on May 15, 1983, with neither House of Congress having passed a resolution of disapproval. On June 6, 1983, the Commission established an effective date for the Rule of January 1, 1984.² Subsequently, the Commission in response to petitions filed by two industry trade associations, announced its decision to postpone the effective date of portions of the Rule until April 30, 1984.³ However, those parts of the Rule requiring only that funeral providers refrain from specified oral or written misrepresentations are scheduled to become effective on January 1, 1984, as previously determined.

The Commission has decided to stay the effective date of § 453.3(b)(1)(ii) of the Rule until April 30, 1984. This section of the Rule prohibits funeral providers from representing that a casket (other than an unfinished wood box) is required for direct cremations. It is intended to operate in conjunction with § 453.4(a) of the Rule which prohibits funeral providers from requiring consumers to purchase a casket, other than an unfinished wood box, for direct cremations, if they arrange direct cremations. Because § 453.4(a) of the Rule has been stayed until April 30, 1984, the Commission has determined that a prohibition on statements by funeral providers that a casket is required for direct cremations would be inequitable.

Accordingly, § 453.3(b)(1)(ii) of the Rule has been stayed until April 30, 1984.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By Direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 83-34853 Filed 12-30-83; 4:30 pm]

BILLING CODE 6750-01-M

¹ 47 FR 42260 (September 24, 1982).

² 48 FR 25274 (June 6, 1983).

³ 48 FR 45537 (October 6, 1983).

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

18 CFR Parts 154 and 271

[Docket No. RM80-47-002; Order No. 94-E]

Regulations Implementing Section 110
of the Natural Gas Policy Act of 1978;
Clarification of Final Rule

December 29, 1983.

AGENCY: Federal Energy Regulatory
Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to clarify how § 271.1104(e) of its regulations, pertaining to retroactive collection of delivery and compression allowances under section 110 of the Natural Gas Policy Act of 1978 by sellers of natural gas subject to the Commission's jurisdiction under the Natural Gas Act apply to § 154.94(k) of its regulations, the blanket affidavit section. The amendment clarifies that sellers of such natural gas who file a blanket affidavit under § 154.94(k) may retroactively collect delivery compression allowances as provided in § 271.1104(e).

EFFECTIVE DATE: March 17, 1983.

FOR FURTHER INFORMATION CONTACT:

Michael A. Stosser, Federal Energy
Regulatory Commission, Office of the
General Counsel, 825 North Capitol
Street, NE., Washington, D.C. 20426
(202) 357-8033

Louis J. Engel, Federal Energy
Regulatory Commission, Office of
Producer and Pipeline Regulation, 825
North Capitol Street, NE.,
Washington, D.C. 20426 (202) 357-8667

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending § 154.94(k) of its regulations to clarify how § 271.1104(e) of the Commission's regulations, pertaining to retroactive collection of delivery and compression allowances under section 110 of the Natural Gas Policy Act of 1978 (NGPA),¹ is affected by the Commission's blanket affidavit procedure in § 154.94(k).

II. The Problem

A. Retroactive Collection of Delivery
and Compression Allowances

On July 25, 1980, the Commission issued Order No. 94,² amending interim

regulations implementing section 110 of the NGPA.³ That order defined production-related activities, established allowances for those activities, and set out an application procedure for prospective collection of the allowances. However, because of the complexity involved in determining an allowance for two types of production-related costs, gathering and compression, the Commission believed they should be established generically. Therefore, it suspended all applications for those allowances and instituted a rulemaking proceeding to develop those allowances.⁴ However, the Commission indicated that a retroactive collection procedure would be provided under which the allowance for gathering and compression costs determined under the generic rulemaking would be applied to costs incurred with respect to gas delivered on or after the date of issuance of Order No. 94, July 25, 1980, or earlier if a seller has filed an application for those allowances, provided that collection of such costs is contractually authorized.⁵

With respect to collecting delivery and compression allowances, in Order No. 94-A, the Commission developed special rules in § 271.1104(e) designed to compensate a first seller who had incurred delivery or compression costs under the terms of its contract in reliance on statements in Order No. 94 that sellers would be able to retroactively collect delivery⁶ and compression allowances. The "retroactive collection period" is specifically defined as "prior to March 7, 1983 but after the earlier of July 25, 1980, or the date on which the seller filed an application with the Commission to recover the costs."⁷ In order to

retroactively collect an allowance for the delivery and compression costs, § 271.1104(e) provides that a first seller must have had the contractual authority to do so; that any collection must be offset by any amounts collected for delivery or compression during the retroactive collection period; and that the collection of the generic allowances must be pro-rated over time.

B. Blanket Affidavit Procedure

In addition to the authorization of retroactive recovery of delivery and compression allowances, the Commission set up procedures for collection of all production-related cost allowances under NGPA section 110. Those selling natural gas that is still subject to the Commission's jurisdiction under the Natural Gas Act,⁸ however, must make certain rate filings in order to collect the allowances, and the blanket affidavit provision in § 154.94(k) was added to provide a simple means of fulfilling the requirement of sections 4, 5 and 7 of the Natural Gas Act.⁹ Under that provision, a first seller that has met the eligibility requirements necessary in order to collect a production-related cost allowance, as set out in § 271.1104, may file a blanket affidavit indicating its intention to collect the production-related allowance applicable to its sale.

In order to provide eligible sellers with the opportunity to collect the allowances beginning on the effective date of the order, the Commission established a two-month grace period. Therefore, an affidavit filed on or after March 7, 1983, but not later than May 6, 1983, will be effective for deliveries beginning on March 7, 1983. However, an affidavit filed after May 6, 1983, will be effective on the date of filing with respect only to deliveries beginning on and after the date of filing.

III. Clarification

It has come to the Commission's attention that the language in the blanket affidavit rule in § 154.94(k) can be interpreted to preclude retroactive collection of delivery and compression allowances under § 271.1104(e) for pre-March 7, 1983, costs. Because the regulation reads that "an affidavit . . . shall become effective with respect to deliveries beginning on March 7, 1983" (emphasis added), it can be read to preclude deliveries beginning prior to that date.

Section 154.94(k) merely marks the date from which a seller, if eligible, may

Act of 1978 and Establishing Policy under the Natural Gas Act," issued July 25, 1980, Docket No. RM80-47 (45 FR 53,099 (Aug. 11, 1980)) [hereinafter cited as *Order No. 94*].

² "Interim Regulations Implementing the Natural Gas Policy Act," issued December 1, 1978, Docket No. RM79-3 (43 FR 56, 448 (Dec. 1, 1978)).

³ On December 16, 1980, the Commission issued a notice of inquiry, Docket Nos. RM80-73 and RM80-74 (45 FR 84,814 (Dec. 23, 1980)). On January 24, 1983, the Commission issued an interim rule establishing allowances (48 FR 5,190 (Feb. 3, 1983)). On September 27, 1983, the Commission issued a final rule that amended and clarified the interim rule (48 FR 44,495 (Sept. 29, 1983)).

⁴ Order No. 94, *supra* note 1, and Order No. 94-A, "Final Rule and Order On Rehearing: Regulations Implementing Section 110 of the Natural Gas Policy Act of 1978 and Establishing Policy Under the Natural Gas Act," (48 FR 5,152 (Feb. 3, 1983)). Docket No. RM80-47-002, issued January 24, 1983, [hereinafter cited as *Order No. 94-A*].

⁵ "Delivery" is defined as gathering and transportation. See 18 CFR 271.1104(c)(3) (revised 1983).

⁷ See 18 CFR 271.1104(e)(1).

⁸ 15 U.S.C. 717-717w (1976 and Supp. V 1981). See 15 U.S.C. 3431 (Supp. V 1981), for categories of gas covered.

⁹ Order No. 94-A, *supra*, note 5, at 5,170-171.

¹ 15 U.S.C. 3301-3432 (Supp. V 1981).

² Order No. 94, "Interim Regulations Implementing Section 110 of the Natural Gas Policy

begin to collect production-related cost allowances under a blanket affidavit. In other words, a qualifying first seller who filed a timely affidavit by May 6, 1983, could collect production-related costs incurred on and after March 7, 1983, the effective date of Order No. 94-A. Because of the Commission's promise in Order No. 94, however, the situation is somewhat different with respect to production-related cost allowances for delivery and compression. The Commission, therefore, wishes to make clear that, by filing an affidavit on or before May 6, 1983, a first seller becomes eligible to collect for deliveries and compression retroactively as of March 7, 1983, for the retroactive collection period subject to the conditions in § 271.1104(e).

Nevertheless, there are certain similarities in the treatment of all production-related costs for the period after March 7, 1983. A qualifying first seller who filed a late affidavit after May 6, 1983, may only begin to collect any production-related cost allowance prospectively from the date of that affidavit. This is also the case with respect to delivery and compression allowances for sales of gas after March 7th. With respect to those costs, a first seller is also denied collection for costs between the date of that affidavit and March 7, 1983. This does not, however, alter the seller's right to collect retroactively for delivery and compression costs incurred during the retroactive collection period.

The Commission amends the regulations slightly to reflect this clarification.

IV. Effective Date

Inasmuch as this amendment effects no substantive change in the rule but is necessary only for proper implementation, the Commission finds that public notice and comment is unnecessary under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553 (1976)). For the same reasons, the amendment is being made effective as of March 7, 1983, the date the original regulations became effective.

List of Subjects in 18 CFR Parts 154 and 271

Natural gas.

In consideration of the foregoing, Parts 154 and 271 of Title 18 Code of Federal Regulations, are amended as set forth below.

By the Commission.
Kenneth F. Plumb,
Secretary.

PARTS 154 AND 271—[AMENDED]

1. The authority citations for Parts 154 and 271 are revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w, Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432, Department of Energy Organization Act, 42 U.S.C. 7101-7352, Executive Order 12009, 3 CFR, 1977 Comp., p. 142.

2. In § 154.94(k)(4), the first sentence is revised to read as follows:

§ 154.94 Changes in rate schedules.

(k) Affidavit to collect production-related costs. * * *

(4) Effective date of coverage under affidavit. Except as otherwise permitted for delivery and compression allowances under § 271.1104(e), an affidavit filed under this paragraph by May 6, 1983, shall become effective with respect to deliveries beginning on March 7, 1983; an affidavit filed under this paragraph after May 6, 1983, shall become effective on the date of filing with respect to deliveries beginning on and after the date of filing. * * *

[FR Doc. 84-220 Filed 1-4-84; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Parts 271 and 274

[Docket No. RM83-3-001; Order No. 336-A]

Reduction in Filing Requirements for Well Category Applications Under Sections 102, 103, 107 and 108 of the Natural Gas Policy Act of 1978

Issued December 29, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing, making clarifications and technical conforming amendments to final rule.

SUMMARY: On September 27, 1983 the Federal Energy Regulatory Commission (Commission) issued Order No. 336, a final rule that amended Parts 271 and 274 of its regulations relating to filing requirements for well category determinations under the Natural Gas Policy Act of 1978 (NGPA).

In this order, the Commission denies rehearing of petitioner's request to permit one application for a section 107(c)(1) deep, high-cost gas determination to cover natural gas produced from any completion location in the wellbore below 15,000 feet. In addition, this order clarifies the

regulations implementing sections 102 and 108 and makes technical conforming changes to the Commission's regulations.

EFFECTIVE DATE: December 29, 1983.

FOR FURTHER INFORMATION CONTACT:

Nancy M. Rizzo, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

Order Denying Rehearing and Making Clarifications and Technical Conforming Amendments To Final Rule

Issued December 29, 1983.

I. Introduction

On September 27, 1983 the Commission issued Order No. 336, a final rule that amended Parts 271 and 274 of its regulations relating to filing requirements for well category determinations under the Natural Gas Policy Act of 1978. The Commission received one petition for rehearing from Getty Oil Company. This order denies that petition. In addition, this order clarifies the regulations implementing sections 102 and 108 and makes certain technical conforming amendments to §§ 274.202 and 274.206.

II. Petition for Rehearing

In Order No. 336, the Commission amended § 274.205 to permit an application for a section 107(c)(1) deep, high-cost gas determination to cover natural gas produced from the completion location identified in the application and any deeper completion location. On October 27, 1983, the Commission received a timely petition for rehearing of that order from Getty Oil Company.¹ The petition requests the Commission to reconsider its decision to restrict the original application for determination to the completion location identified and any deeper completion locations. Getty requests that the Commission amend its regulations to permit the original application to cover all completion locations below 15,000 feet, and contends the Commission has no factual or policy reasons for limiting this rule to completion locations deeper than the original completion location.²

¹ Order No. 336 covered two docket numbers: RM83-3-000 and RM81-12-000. The petition for rehearing filed by Getty Oil Company is a request for a rehearing of the issues in Order No. 336 associated with Docket No. RM83-3-000 only.

² On November 3, 1983, Getty filed a petition for rehearing of the Commission's declaratory order issued October 4, 1983, in Docket No. GP82-46-000. In that order the Commission determined that the Commission's regulations required a new determination for each uphole completion in a section 107(c)(1) deep gas well. This petition for rehearing is still pending at the Commission.

Getty's factual argument asserts that the same documentary evidence is used to establish the depth of a completion location regardless of its relationship to other completion locations in the same wellbore. Hence, the Commission does not need to review this documentary evidence for completion locations above the original completion location and below 15,000 feet (hereinafter referred to as "uphole completions").

The Commission permitted the original application to cover any subsequent deeper completion location because the deeper completion location necessarily satisfied the "deep gas" definition. Specifically, the Commission could be assured that the completion location was below 15,000 feet, since the original completion location depth had been verified in the original determination.

In considering whether to include "uphole completions" in this application for determination, the Commission specifically rejected this option and Getty's argument in the final rule. Since there is no assurance that an "uphole completion" will be completed below 15,000 feet, there is no basis to determine that the completion location satisfies the statutory criteria. As stated in the final rule: "[t]he filing requirements established in the regulations for these 'uphole completions' are necessary to enable the jurisdictional agencies to verify that the completion location is below 15,000 feet. The jurisdictional agency must review the well completion report and relevant portions of the well log to corroborate the depth of the completion location."²

Getty's second argument states that there is no policy reason for the Commission to require a separate determination for "uphole completions." Getty notes that as a practical matter, most deep gas wells will first be completed in the deepest location and subsequently be recompleted in a completion location above this deepest completion location.

The purpose of the final rules adopted in Order No. 336 was to reduce filing burdens by eliminating those applications that were not necessary to support the substantial evidence standard in section 503 of the NGPA. The Commission determined that when a producer recompletes uphole of the original completion location, the depth of this completion location must be reviewed by the jurisdictional agency to establish the substantial evidence requirement in the NGPA. Accordingly, Getty's petition is denied for the above

stated reasons and the reasons set forth in the final rule.

III. Technical, Conforming Amendments to Regulations

The Commission adopted a final rule in § 271.805(e)(2) requiring the purchaser (or operator) to provide the operator (or purchaser) with a copy of its petition for a determination under § 271.806 or a copy of the motion contesting the disqualification or requalification of a stripper well. This rule removed the requirement that a copy of this petition or motion be filed with the jurisdictional agency or the Commission.

The final rule inadvertently retained the portion of the oath statement in § 274.206 that stated a copy of the petition or motion was filed with the jurisdictional agency and the Commission. The Commission is, therefore, removing these words from the oath statement to conform with the rule adopted in Order No. 336.

In addition, the final rule did not amend the reference to § 274.202(e) in § 274.202(b). Since old paragraph (e) was renumbered paragraph (d), this reference should be § 274.202(d).

IV. Clarification of OCS and Stripper Well Regulations

The Commission has received several informal inquiries concerning the stripper well regulations adopted by the Commission in Order No. 336.³ These inquiries address the issue of whether the Commission intended to permit a well that received a section 108 determination and subsequently disqualified before December 7, 1983, the effective date of Order No. 336, to be eligible for the section 108 stripper well price if the well subsequently requalified according to the regulations adopted in Order No. 336.

The Commission intended the disqualification and requalification rules adopted in Order No. 336 to apply not only to any well that receives an affirmative determination on or after December 7, 1983 but also to any well that received an affirmative section 108 determination prior to December 7, 1983, regardless of whether that well subsequently disqualified as a stripper well prior to that date. The Commission's intent in adopting these procedures in Order No. 336 was to require only one determination for a stripper well. Thus, the rules in Order No. 336 are applicable to stripper wells

that disqualify or disqualify and requalify, provided they have received an affirmative section 108 determination.

The Commission notes, however, that even though a new application need not be filed for a stripper well that was disqualified prior to December 7, 1983, the rule does not permit collection of the stripper well price for gas produced from a disqualified well before the effective date of the rule. Hence, the rule does not effect the refund obligation a producer may have incurred prior to December 7, 1983, if that producer collected the section 108 price during the period the well was disqualified or during the period the well produced within the stripper well limitation if a new application was not filed.

Finally, in Order No. 336, the Commission adopted a new procedure for determinations of gas produced from a new OCS lease under section 102(c)(1)(A) of the NGPA. Under this procedure, the jurisdictional agency (U.S. Department of the Interior, Minerals Management Service (MMS)) may file one notice of determination for all new natural gas on new OCS leases by submitting the lease number, area and block number, and the date the OCS lease was issued by the Secretary of the Interior. In addition, the Commission permitted MMS to file a blanket notice of determination to cover new leases that were issued prior to the effective date of the rule.⁴ The Commission stated in the preamble that "[a]ny gas produced from a well drilled on a new lease included in this blanket notice would be eligible for the section 102 maximum lawful price beginning on the date the blanket notice is filed at the Commission."⁵ Because MMS submitted its blanket notice to the Commission prior to the effective date of this rule, the Commission is clarifying that gas produced from a well drilled on a new lease included in the blanket notice is eligible for the section 102 rate beginning on December 7, 1983, the effective date of Order No. 336, unless a separate application for determination for a well was previously filed.

List of Subjects in 18 CFR Part 274

Natural gas, Wage and price controls.

In consideration of the foregoing, the Commission orders:

(A) The petition for rehearing of Order No. 336 is denied; and

² The Commission also has received a request from Dorchester Oil and Gas Company for an official interpretation from the General Counsel concerning these stripper well regulations. (Request for Interpretation, Dorchester Gas-Producing Company, December 2, 1983.)

³ Pursuant to § 274.104(c), the blanket notice filed by the MMS is a notice of determination and therefore is subject to the 45-day determination review period in § 275.202.

⁴ 48 FR 44508, 44510 (September 29, 1983).

⁵ 48 FR 44,508, 44,515 (September 29, 1983) (Order No. 336).

(B) The regulations in Part 274, Subchapter H, Chapter I, Title 18, Code of Federal Regulations are amended as set forth below.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 274—[AMENDED]

1. The authority citation for Part 274 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (Supp. V 1981); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. V 1981); E.O. 12009, 3 CFR 142 (1978), unless otherwise noted.

§ 274.202 [Amended]

2. Sections 274.202 (b)(1)(v), (b)(1)(vi), (b)(2)(iv), and (b)(2)(v) are amended by removing the reference to "§ 274.202(e)" and inserting, in its place, "§ 274.202(d)".

§ 274.206 [Amended]

3. In § 274.206,
A. Paragraphs (c)(6), (d)(5), and (e)(7)(iii) are amended by removing the words "the jurisdictional agency, the Commission, and"; and
B. Paragraph (f)(5) is amended by removing the words "on the Commission and".

[FR Doc. 84-219 Filed 1-4-84; 8:45 am]
BILLING CODE 6717-01-M

18 CFR Part 282

[Docket No. RM80-18-001]

Treatment Under the Incremental Pricing Program of Natural Gas Used in the Manufacturing Process for Fertilizer, Agricultural Chemicals, Animal Feed, or Food; Order Denying Rehearing

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: On September 24, 1981, the Federal Energy Regulatory Commission (Commission) issued Order No. 177 (46 FR 50060, October 9, 1981), a final rule that exempted from incremental pricing the boiler fuel use of natural gas by the fertilizer, agricultural chemicals, animal feed and food industries. The Commission issued the final rule pursuant to its exemptive authority under section 206(d) of the Natural Gas Policy Act of 1978. The Commission received one application for rehearing of the final rule. For the reasons discussed in this order and in the final rule, the Commission denies rehearing of the final rule.

FOR FURTHER INFORMATION CONTACT:

Barbara K. Christin, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

Issued: December 29, 1983.

I. Introduction

On September 24, 1981, the Federal Energy Regulatory Commission (Commission) issued Order No. 177 (46 FR 50060, October 9, 1981), a final rule amending the Commission's regulations on incremental pricing under Title II of the Natural Gas Policy Act (NGPA) (15 U.S.C. 3301-3432). The rule, which became effective on November 1, 1981, provides an exemption from incremental pricing surcharges for natural gas used as boiler fuel in the manufacture of fertilizer, agricultural chemicals, animal feed or food, until such time as the Commission determines that there is an alternative fuel that is economically practicable and reasonably available.

The Commission issued the final rule pursuant to its authority under section 206(d) of the NGPA. Section 206(d) authorizes the Commission to issue a rule or order, providing for the exemption, "in whole or in part, of any other incrementally priced industrial facility or category thereof."

On October 23, 1981, the Process Gas Consumers Group, the American Iron and Steel Institute, and the Georgia Industrial Gas Group (Groups) jointly filed an application for rehearing of Order No. 177. On November 20, 1981, the Commission granted the application for rehearing of Order No. 177 solely for purposes of further consideration. For the reasons discussed below and in Order No. 177, the Commission denies the application for rehearing.

II. Discussion

In the application for rehearing, the Groups argue that there was no basis for the policy decision in Order No. 177 to exempt from incremental pricing the boiler fuel use of natural gas in the manufacture of fertilizer, agricultural chemicals, animal feed or food. The application accordingly requests that the Commission revoke the exemption by rescinding the final rule.

The Groups argue that the exemption granted by Order No. 177 is contrary to Congressional intent in the NGPA. Section 206(b)(3)(B) of the NGPA includes as agricultural uses that are exempt from incremental pricing only the process and feedstock uses of gas by the fertilizer, agricultural chemicals,

animal feed or food industries. The Groups assert that the Commission's use of legislative history as support for the exemption that goes beyond the uses defined in section 206(b)(3)(B) is inappropriate because the statute is clear and unambiguous in excluding the boiler fuel use of gas by these enumerated industries.

The Commission disagrees that its discussion of the legislative intent is inappropriate. Section 206(b) excludes the boiler fuel use of natural gas by the four industries from qualifying for an exemption as an *agricultural use*. On the other hand, the exemption granted by Order No. 177 was issued under section 206(d) of the NGPA.

Section 206(d) confers on the Commission broad discretion to issue exemptions in addition to those specifically enumerated in paragraphs (a)-(c) of that section. Section 206(d) allows the Commission to exempt, in whole or in part, "any other incrementally priced industrial facility or category thereof." This exemptive authority was intended to maximize the Commission's discretion in administering the incremental pricing program. The preamble to the final rule discusses the scope of this exemptive authority and cites *Ohio Association of Community Action Agencies v. Federal Energy Regulatory Commission (Ohio Association)*, 654 F.2d 811 (D.C. Cir. 1981), in support of the Commission's use of its exemptive authority in this proceeding.¹ In *Ohio Association*, the court said that the Commission is to use this exemptive authority "flexibly" to accomplish other purposes talked about in the legislative history—to prevent individual hardship, to protect essential process uses of natural gas, * * * [and] to introduce a measure of stability in the market * * *.²

In considering whether to issue the proposed exemption using its section 206(d) authority, the Commission reviewed the relevant legislative history and concluded that the exemption "appears to be consistent with Congressional intent to single out generally [the agricultural] industry for preferred treatment in connection with incremental pricing."³

The Groups further allege that Order No. 177 is violative of the spirit of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Process Gas Consumer's Group v. United States Department of Agriculture (Process Gas)*, 657 F.2d 459

¹ 46 FR 50061.

² 654 F.2d at 824-825.

³ 46 FR 50063.